



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83132; File No. SR-NASDAQ-2018-031]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4702(b)(5), Rule 4703(d), Rule 4752(d)(2)(B), and Rule 4754(b)(2)(B)

April 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 18, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702(b)(5) and Rule 4703(d) to prevent Midpoint Peg Post-Only Orders and Orders entered with a Midpoint Pegging Order Attribute from participating in the Nasdaq Halt Cross, and (2) to amend Rule 4752(d)(2)(B) and Rule 4754(b)(2)(B) to state that Open Eligible Interest and Close Eligible Interest, respectively, are used in determining the “imbalance” for purposes of those rules.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (1) amend Rule 4702(b)(5) and Rule 4703(d) to prevent Midpoint Peg Post-Only Orders (“MPPOs”) and Orders entered with a Midpoint Pegging Order Attribute (“Midpoint Pegged Orders”) from participating in the Nasdaq Halt Cross, and (2) to amend Rule 4752(d)(2)(B) and Rule 4754(b)(2)(B) to state that Open Eligible Interest and Close Eligible Interest, respectively, are used in determining the “imbalance” for purposes of those rules.

Excluding MPPOs and Midpoint Pegged Orders from the Nasdaq Halt Cross

An “MPPO” is defined in Rule 4702(b)(5)(A) as an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the national best bid and offer (“NBBO”), and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. Today, Rule 4702(b)(5)(C) provides that MPPOs are available during Market Hours only, and may not participate in the Nasdaq Opening Cross conducted pursuant to

Rule 4752 or the Nasdaq Closing Cross conducted pursuant to Rule 4754.³ However, MPPOs are not similarly prohibited from participating in the Nasdaq Halt Cross conducted pursuant to Rule 4753 – i.e., the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.

Similar to current behavior for the Nasdaq Opening Cross and the Nasdaq Closing Cross, the Exchange believes that it would be beneficial for members and investors to prevent MPPOs from executing in the Nasdaq Halt Cross, as these Orders are designed for regular trading on the Exchange’s continuous market where there is an active market that can be used to price these Orders. The Exchange therefore proposes to amend Rule 4702(b)(5)(C) to provide that MPPOs may not participate in the Nasdaq Halt Cross. Furthermore, the Exchange proposes to add language to Rule 4702(b)(5)(C) that explains that MPPOs will be cancelled by the System when a trading halt is declared, and any MPPOs entered during a trading halt will be rejected. The System currently rejects MPPOs entered when a trading halt is in effect but does not cancel existing MPPOs when the trading halt is declared. The proposed behavior will ensure that MPPOs do not participate in the subsequent reopening of the halted security in the Nasdaq Halt Cross by cancelling existing MPPOs when the trading halt is declared in addition to curtailing the ability of members to enter new MPPOs during the trading halt, which the Exchange believes is consistent with the intention of this Order Type. Furthermore, MPPOs will be handled consistently across the Nasdaq Opening Cross, Nasdaq Closing Cross, and Nasdaq Halt Cross, which is consistent with how the Exchange believes members want these orders treated.

³ An MPPO entered prior to the beginning of Market Hours will be rejected, and an MPPO remaining on the Nasdaq Book at 4:00 p.m. ET will be cancelled by the System. See Rule 4702(b)(5)(C).

Furthermore, the Exchange proposes to remove language describing MPPO behavior in a cross where the MPPO locks a preexisting Order. Specifically, Rule 4702(b)(5)(A) contains language that states that: “For purposes of any cross in which a Midpoint Peg Post-Only Order participates, a Midpoint Peg Post-Only Order to buy (sell) that is locking a preexisting Order shall be deemed to have a price equal to the price of the highest sell Order (lowest buy Order) that would be eligible to execute against the Midpoint Peg Post-Only Order in such circumstances. Thus, a Midpoint Peg Post-Only Order to buy that locked a preexisting Non-Displayed Order to sell at \$11.03 would be deemed to have a price of \$11.02. It should be noted, however, that Midpoint Peg Post-Only Orders may not be entered prior to the Nasdaq Opening Cross, and the System cancels Midpoint Peg Post-Only Orders prior to the commencement of the Nasdaq Closing Cross.” This language, which only applies to MPPOs that participate in a cross, is no longer necessary as MPPOs will be systematically prohibited from trading in any cross – i.e., the Nasdaq Opening Cross, Nasdaq Halt Cross, or Nasdaq Closing Cross. The Exchange therefore proposes to eliminate this language from its rulebook.⁴

In addition to MPPOs the Exchange offers Midpoint Pegged Orders. Rule 4703(d) describes the Pegging Order Attribute, including Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer. Midpoint Pegged Orders are not displayed. Like MPPOs, Midpoint Pegged Orders are also designed for regular trading on the Exchange’s continuous market where there is an active market that can be used to price these Orders. Thus, similar to the proposed handling of

⁴ This language references that MPPOs do not participate in the Nasdaq Opening Cross or Nasdaq Closing Cross. Although the Exchange is not changing that behavior, the Exchange proposes to remove this reference, which is duplicative of language described above in Rule 4702(b)(5)(C).

MPPOs the Exchange proposes to prevent Midpoint Pegged Orders from participating in the Nasdaq Halt Cross. As such, the Exchange proposes to amend Rule 4703(d) to provide that Orders with Midpoint Pegging will be cancelled by the System when a trading halt is declared, and any Orders with the Midpoint Pegging Order Attribute entered during a trading halt will be rejected. Similar to MPPOs, the System currently rejects Midpoint Pegged Orders entered when a trading halt is in effect but does not cancel existing Midpoint Pegged Orders when the trading halt is declared. Similar to the behavior of MPPOs described above, the proposed behavior for Midpoint Pegged Orders will ensure that Midpoint Pegged Orders do not participate in the subsequent reopening of the halted security in the Nasdaq Halt Cross by cancelling existing Midpoint Pegged Orders when the trading halt is declared in addition to curtailing the ability of members to enter new Midpoint Pegged Orders during the trading halt, thereby ensuring that no Orders with this Order Attribute will participate in the Nasdaq Halt Cross.

Nasdaq Opening Cross and Nasdaq Closing Cross Imbalance

The Exchange disseminates an Order Imbalance Indicator beginning at 9:28 a.m. to increase market transparency ahead of the Nasdaq Opening Cross, and beginning at 3:50 p.m. to increase market transparency ahead of the Nasdaq Closing Cross. The Order Imbalance Indicator includes several data elements that provide information about the crosses, including the Current Reference Price, the number of paired shares at that price, and the size of any Imbalance. On July 13, 2017, the Exchange filed a proposed rule change that, among other things, amended language describing the Current Reference Price, the associated paired share count, and the definition of Imbalance.⁵ Specifically, the Exchange amended Rule 4752(a) to exclude Open Eligible Interest

⁵ See Securities Exchange Act Release Nos. 81188 (July 21, 2017), 82 FR 35014 (July 27, 2017) (Notice); 81556 (September 8, 2017), 82 FR 43264 (September 14, 2017) (Approval Order) (SR-NASDAQ-2017-061).

from these data elements for the Nasdaq Opening Cross, and amended Rule 4754(a) to exclude Close Eligible Interest from these data elements for the Nasdaq Closing Cross.

With these changes, “Imbalance” is now correctly defined in the rulebook: (1) for the Nasdaq Opening Cross, as the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, or OIO order shares at a particular price at any given time, and (2) for the Nasdaq Closing Cross, as the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, or IO order shares at a particular price at any given time. Prior to SR-Nasdaq-2017-061, the definition of Imbalance had mistakenly included Open Eligible Interest as contra-side interest for matching MOO, LOO or Early Market Hours orders when calculating the size of any Imbalance in the Nasdaq Opening Cross, and mistakenly included Close Eligible Interest as contra-side interest for matching MOC or LOC orders when calculating the size of any Imbalance for the Nasdaq Closing Cross.

The term Imbalance, however, is also used in other parts of the Nasdaq Opening Cross and Nasdaq Closing Cross rules. For example, the term Imbalance is used: (1) in Rule 4752(d)(2)(B) to describe a tie-breaker used to determine the Nasdaq Opening Cross price if more than one price would maximize the number of shares of MOO, LOO, OIO, Early Market Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed pursuant to Rule 4752(d)(2)(A), and (2) in Rule 4754(b)(2)(B) to describe a tie-breaker used to determine the Nasdaq Closing Cross price if more than one price would maximize the number of shares of Eligible Interest in the Nasdaq Market Center to be executed pursuant to Rule 4754(b)(2)(A). Specifically, these rules provide that if more than one price exists under Rule 4752(d)(2)(A) or Rule 4754(b)(2)(A), each of which are described above, the Nasdaq Opening

Cross and Nasdaq Closing Cross, respectively, shall occur at the price that minimizes any Imbalance.

In fact, if more than one price exists under Rule 4752(d)(2)(A), the Nasdaq Opening Cross shall occur at the price that minimizes the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, Open Eligible Interest, or OIO order shares – i.e., the previous definition of Imbalance under Rule 4752(a)(1). Similarly, if more than one price exists under Rule 4754(b)(2)(A), the Nasdaq Closing Cross shall occur at the price that minimizes the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, Close Eligible Interest or IO order shares – i.e., the previous definition of Imbalance under Rule 4754(a)(2). While Open Eligible Interest and Close Eligible Interest are not included in the definition of Imbalance for purposes of the Order Imbalance Indicator as such interest may be executed prior to the execution of the cross, they are included in the cross price calculation if remaining on the book at the time the cross is executed. The Exchange therefore proposes to amend Rule 4752(d)(2)(B) and Rule 4754(b)(2)(B) to appropriately describe the tie-breakers discussed above using the previous definition of Imbalance for the Nasdaq Opening Cross and Nasdaq Closing Cross, respectively.

Implementation

The Exchange proposes to introduce the changes described in this proposed rule change in Q2 2018. The Exchange will announce the implementation date of this functionality in an Equity Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Excluding MPPOs and Midpoint Pegged Orders from the Nasdaq Halt Cross

As indicated in the Exchange's current rules, MPPOs are designed for Market Hours trading and therefore do not participate in either the Nasdaq Opening Cross or Nasdaq Closing Cross. Nevertheless, MPPOs may trade in the Nasdaq Halt Cross today. The Exchange believes that members prefer not to have their MPPOs executed in any of the crosses, including the Nasdaq Halt Cross, and is therefore proposing to cancel MPPOs when a trading halt is initiated. Furthermore, the System already prevents the subsequent entry of MPPOs during the trading halt as reflected in the proposed rule. The Exchange believes that it is consistent with the protection of investors and the public interest to treat MPPOs similarly across all three crosses so that members have a consistent experience when entering MPPOs at different times of the trading day.

The proposed changes would also eliminate language in the MPPO rules that describe MPPO handling during a cross. As explained in the purpose section of this proposed rule change, this language will no longer be necessary since MPPOs will be prohibited from participating in any of the Exchange's three crosses – i.e., the Nasdaq Opening Cross, Nasdaq Closing Cross, and Nasdaq Halt Cross. The Exchange believes that this proposed change is consistent with the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

protection of investors and the public interest because it will properly reflect that MPPOs are no longer eligible for any crosses, and will only trade on the continuous book.

Similar to the proposed handling of MPPOs, the Exchange is also proposing to prevent Midpoint Pegging Orders from participating in the Nasdaq Halt Cross. The Exchange believes that it is consistent with the protection of investors and the public interest to cancel these Orders when a trading halt is initiated so that they cannot participate in the Nasdaq Halt Cross. Furthermore, the System already prevents the subsequent entry of additional such Orders during a trading halt. The Exchange believes that members do not want their Midpoint Pegging Orders to trade in the Nasdaq Halt Cross and is therefore introducing functionality that will ensure that these Orders will not do so.

Nasdaq Opening Cross and Nasdaq Closing Cross Imbalance

The Exchange believes that the proposed changes regarding the Nasdaq Opening Cross and Nasdaq Closing Cross price calculations are consistent with the protection of investors and the public interest because these changes properly identify the tie-breakers used to determine the opening and closing prices when multiple prices would satisfy the maximum quantity requirements of Rule 4752(d)(2)(A) or Rule 4754(b)(2)(A), respectively. Open Eligible Interest or Close Eligible Interest are not used in determining the size of any Imbalance for the Order Imbalance Indicator because such interest may be executed before the time of the cross. Such interest is used in the opening and closing price tie-breakers pursuant to Rule 4752(d)(2)(B) and Rule 4754(b)(2)(B), however, because it is available to execute in the crosses if remaining on the book at the time of the cross price calculation. Using all available interest in these price calculations, rather than only on-open or on-close order types ensures that these price discovery mechanisms properly reflect the interest available at the time the crosses are conducted. The

Exchange's rules previously included Open Eligible Interest and Close Eligible Interest in the tie-breakers when such interest was included in the definition of Imbalance. With the recent changes to those definitions – which now align with the interest considered in the Imbalance field of the Order Imbalance Indicator – the Exchange believes that it is necessary to update Rule 4752(d)(2)(B) and Rule 4754(b)(2)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Currently, MPPOs and Midpoint Pegging Orders can participate in the Nasdaq Halt Cross despite the fact that these Orders are designed for regular trading on the continuous book. The Exchange is now enhancing MPPO and Midpoint Pegging Order handling to prevent all such Orders from participating in the Nasdaq Halt Cross by cancelling existing interest on the Exchange's order book in addition to rejecting new Orders as done by the System today. The Exchange does not believe this change will have any significant impact on competition as the proposed changes will apply to all MPPOs and Midpoint Pegging Orders. Moreover, the Exchange believes that this is how members want these Orders treated. Furthermore, the proposed changes with respect to the Nasdaq Opening Cross and Nasdaq Closing Cross price calculations are rule corrections and will therefore have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii)

become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to prevent MPPOs and Midpoint Pegged Orders from participating in the Nasdaq Halt Cross without delay. The Commission also notes that the proposal would ensure that MPPOs and Midpoint Pegged Orders do not participate in any cross (i.e., Nasdaq Opening Cross, Nasdaq Halt Cross, and Nasdaq Closing Cross). According to the Exchange, MPPOs and Midpoint Pegged Orders are designed for regular trading on the Exchange's continuous market, and the proposal would ensure that these orders behave in a manner consistent with members' expectations. Moreover, waiver of the operative delay would allow the Exchange to immediately correct its rules to reflect that Open Eligible Interest and Close Eligible Interest (i.e., interest that is available to execute in the crosses if remaining on the book at the time of the cross price calculation) are included in tie-breakers for

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

the Nasdaq Opening Cross and Nasdaq Closing Cross price calculations, respectively, thus reducing any potential member confusion surrounding the cross price calculations. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-031 on the subject line.

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-031 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,
Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).

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